# In the Court of Claims.

**No. 23,214.**

THE EASTERN CHEROKEES

*vs.*

THE UNITED STATES.

## Order.

The special agent for the enrollment of the Eastern Cherokees, Guion Miller, having made a report under date of February 18, 1907, to the Commissioner of Indian Affairs, respecting the distribution of the fund arising from the judgment hereinbefore awarded, and the Secretary of the Interior having referred said report on February 20, 1907, to this court for consideration of the matters therein set out, it is ordered this 5th day of March, 1907, that argument be heard upon the matters involved in said report, on Monday, April 8, 1907; and that due notice, by publication, shall be given to all parties in interest to appear on said day. Said notice shall be in form as follows:

Notice is hereby given to all Eastern Cherokees, that the Secretary of the Interior has submitted to the Court of Claims for its decision, various questions respecting the distribution of the fund arising from the judgments

of the Court of Claims of May 18, 1905, and May 28, 1906, involving among others, the following points:

First. Shall the rolls of 1851 be used as the exclusive basis for the present enrollment?

Second. Shall the distribution be per stirpes or per capita?

Third. If per stirpes, what disposition shall be made of those portions for which there have been no applications.

The Court of Claims has fixed Monday, April 8, 1907, for hearing argument upon these questions, when all parties in interest may be represented.

Said publication shall be made in the following newspapers:

In Indian Territory.—Vinita "Leader," Muscogee "Phœnix," Tahlequah "Arrow," Bartersville "Examiner," Fort Gibson "Post," Claremore "Progress," and Sallisaw "News."

In Arkansas.—Fort Smith "Elevator."

In Georgia.—Canton "Cherokee Advance," Dalton "Argus," and Rome "Tribune."

In Mississippi.—Holly Springs "Reporter."

In North Carolina.—Asheville "Citizen," Murphy "Cherokee Scout," and Waynesville "Courier."

In Tennessee.—Athens "Post," Chattanooga "Times," Cleveland "Banner," and Ducktown "Gazette."

In Virginia.—Abingdon "Virginian" and Marion "Democrat."

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *February 20, 1907.*

The CHIEF CLERK, the Court of Claims.

SIR: I transmit herewith a communication dated 18th instant addressed to the Commissioner of Indian Affairs by Mr. Guion Miller, Special Agent for the Enrollment of

Eastern Cherokees, with three enclosures, regarding difficulties which have developed in the prosecution of his work of making said enrollment.

Mr. Miller suggests that the Court of Claims be requested to give him further instructions in the matter, and that certain questions, six in number, specified in his said communication, be submitted for the determination of the court. This suggestion is concurred in by the Indian Office; also the further suggestion that the matter be given early consideration, and a ruling obtained, if possible, before the summer vacation of the court.

The matter is, therefore, respectfully submitted, with request for an early consideration and determination of the questions presented by Special Agent Miller.

Very respectfully,

THOS. RYAN,
*First Assistant Secretary,*

1489 Ind. Div., 1907.
4 enclosures.
JES.

OFFICE OF INDIAN AFFAIRS,
WASHINGTON, D. C., *February 18, 1907.*

The Honorable, COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

SIR: In the matter of the enrollment of the Eastern Cherokees, I have the honor to report that on January 29, 1907, Belva A. Lockwood, claiming to act on behalf of herself and a large number of her clients as well as a large number of attorneys, filed a petition in this office, asking among other things that the Department ruling of August 20, 1906, which in effect limited the right to enrollment of the Eastern Cherokees to such as were enrolled for the per capita payment made to the Eastern Cherokees in 1851, where living, and to the legal representatives of those so enrolled who have since died, be

changed so as to authorize the enrollment of claimants who can prove that they are the descendants of Eastern Cherokees enrolled under the provisions of the treaty of 1835-6, but who can not show that they, or any of their ancestors, were enrolled in 1851.

The petition makes the claim that the limitation to the rolls of 1851 is in conflict with the terms of the judgment of the Supreme Court in the case, which made no reference to the rolls of 1851, and that for this reason the limitations contained in the order of August 20, 1906, are improper and illegal. The petition goes further and claims that the order of August 20, 1906, does not in fact comply with the terms of the decree of the Court of Claims of May 28, 1906.

This petition puts directly before this office a question which has been informally raised by a large number of attorneys in conversation with me relative to this case, and in quite a large number of applications which have been filed for participation in the Eastern Cherokee fund.

The matter is of such vital importance that I deem it my duty to present the matter fully, and at the same time to call attention to other difficulties which have presented themselves to me in the consideration of this work, and which are more or less involved in the discussion of the petition above referred to.

The decree of the Court of Claims of May 18, 1905, in treating of the disposition to be made of the fund now to be distributed, after providing for the payment of attorneys' fees and the expenses of the enrollment, contains this language: "Second, the remainder to be distributed directly to the Eastern and Western Cherokees, who are parties either to the Treaty of New Echota, as proclaimed May 23, 1836, or the Treaty of Washington of August 6, 1846, as individuals, whether east or west

of the Mississippi River, or *to the legal representatives of such individuals.*"

The Supreme Court modified this portion of the decree by eliminating the Old Settlers, that court making use of this language: "On consideration whereof, it is now here ordered and adjudged by this court that the second subdivision of the fourth paragraph of the decree of the said Court of Claims in this cause be modified so as to direct the distribution to be made to the Eastern Cherokees, as individuals, whether east or west of the Mississippi River, parties to the treaty of 1835–6 and 1846, and exclusive of the Old Settlers, and, as so modified, be, and the same is hereby, affirmed."

It will be noted that neither the original decree of the Court of Claims nor this modification by the Supreme Court of the United States, makes any reference to the rolls of 1851; it will also be noticed that in the Supreme Court order the language, "or to the legal representatives of such individuals," contained in the original decree of the Court of Claims is not retained, and it may be here further noted that this language is not repeated in the final decree of the Court of Claims of May 28, 1906.

In said decree of May 28, 1906, the court, after quoting the language of the mandate of the Supreme Court containing the modification above referred to, proceeds as follows: "And in accordance with said decree, as it was directed to be and is now modified, it is further ordered and decreed that the Secretary of the Interior prepare, or cause to be prepared, a list or roll of all persons coming within the said description entitled to share in the distribution of said fund; and in preparing the said list or roll of such persons, *the Secretary of the Interior shall accept as a basis for the distribution of said fund the rolls of 1851, upon which the per capita payment*

*to the Eastern Cherokees was made*, and make such distribution in pursuance of article 9 of the treaty of 1846."

The order of August 20, 1906, was based upon this language contained in the decree of May 28, 1906.

That it was the intention of the Court of Claims to have this payment made per stirpes is evident from the language of the original decree, wherein it states that the fund was to be distributed to the parties to the treaties of 1835–6 and 1846, as individuals, "*or to the legal representatives of such individuals;*" nor does there appear to be anything in the mandate of the Supreme Court in conflict with the idea of a per stirpes payment. In order that there may be a per stirpes payment there must be some fixed time, as of which the enrollment is to be made, in order that the exact amount of each distributive share may be determined, and, furthermore, it would be absolutely essential to determine the names of the individuals through whom the per stirpes distribution is to be made.

I am informed that when the final decree was under consideration by the Court of Claims the attention of the court was called to the fact that the Treaty Roll of 1835–6 was incomplete in that it gave only the names of the heads of families, with the number in each family, but without giving the individual names of the other members of the family. There was, I believe, no roll made under the treaty of 1846. I am further informed that the court was advised that while the Treaty Roll of 1835–6 was incomplete, that the rolls of 1851, upon which the per capita payment was made to the Eastern Cherokees, were complete, and did give the individual names of each Indian enrolled. As I understand it, this was the primary cause of the Court of Claims inserting in the decree the provision relative to the rolls of 1851. It was naturally supposed that, inasmuch as the rolls of 1851 were intended to contain the names of all Eastern Cher-

okees entitled under the provisions of the treaties of 1835–6 and 1846, that no hardship would be imposed by adopting these rolls as conclusive evidence of just who were so entitled at that time, and that, as no other complete rolls were available, the necessities of the case would require that the rolls of 1851 be adopted. As I am further advised no question was then raised as to whether or not this provision was in conflict with the terms of the mandate of the Supreme Court.

If this were a controversy affecting white men, *sui juris*, it could be easily maintained that the enrollment of 1851, having been made under direct authority, was in effect a judicial determination of all who were entitled under the treaties of 1835–6 and 1846, to the exclusion of all others not enrolled. There is a serious question, however, as to whether, in a case involving the rights of Indians, who stand in the relation of wards to the Government, an enrollment made independently by the Government of its own motion and without the fullest publication and notice to the Indians, could be held to be a judicial determination of the rights of the Indians, to the exclusion of individuals who may have removed from the locality, and who may have been in ignorance of the fact that an enrollment was taking place.

As a matter of fact, as I am informed, and am lead to believe by some of the applications already on file, there are quite a number of Eastern Cherokees who can prove that they or their ancestors were duly enrolled under the treaty of 1835–6, who will be unable to prove that they or their ancestors were so enrolled in 1851. By way of illustration, I will cite the case of one applicant, which affects a group of applicants similarly situated.

Sarah Poe, of Kansas City, Mo., who was born in 1857, has filed application No. 2028, claiming through her mother, Martha D. Harralson, to her grandfather, Alexander Brown. From affidavits filed in this group of

applications, it appears to be quite well established that Alexander Brown was an Eastern Cherokee Indian, coming originally from McMinn County, Tennessee, and that shortly after the treaty of 1835–6 he removed to Missouri, where he died about 1840. The Treaty Roll of 1835–6 shows Alexander Brown to have been enrolled at that time apparently with two children, but it does not appear that his children were enrolled in 1851; doubtless due to the fact that they were so far removed from their original dwelling place. Clearly, if this applicant can establish the fact that her grandfather, Alexander Brown, was the Alexander Brown whose name was enrolled under the treaty of 1835–6, she will have brought her case within the express terms of the mandate of the Supreme Court of the United States, but owing to the fact that her mother was not enrolled in 1851, it is equally clear that under the order of August 20, 1906, based on the decree of the Court of Claims of May 28, 1906, she would be cut off from participation in this fund.

There are a considerable number of other cases similar to the above, but this is given simply for illustration. It is probable that the attention of the Court of Claims was not drawn to cases of this character when it entered its decree of May 28, 1906.

While discussing this proposition, it may be well also to call attention particularly to the character of the rolls of 1851, and to point out some of the defects in these rolls, which, it is believed, were not brought to the notice of the Court of Claims at the time of the entering of its decree. The rolls of 1851 are divided into two parts, first, the Chapman Roll, which includes the Indians residing east of the Mississippi River, and second, the Drennen Roll, which includes the Eastern Cherokees residing west of the Mississippi River. The Drennen Roll, in turn, is divided into nine divisions or districts. The Chapman Roll includes 2,134 names, to which were added,

by special act of Congress, 87 other names; this roll was based upon a census roll made by D. W. Siler in 1851, and is quite complete in that it gives the names, ages, and relationship of all the Indians, together with the locality in which they reside. Considerably more than half of the Indians on this roll, however, are enrolled under their Indian names. The Drennen Roll of the Eastern Cherokees west of the Mississippi River, is quite incomplete, in that no ages are given and the relationship is not stated, although the names are arranged in what is supposed to be family groups. This roll contains 14,094 names, more than half of which are Indian names and there is nothing to indicate the sex of the persons so enrolled under Indian names.

The two rolls together, therefore, contain 16,315 names, of which 9,000 or 10,000 are Indian names. These Indian names were recorded as the agent understood it at that time, and it is natural to suppose that many inaccuracies in spelling crept in. During the fifty-five years which have elapsed, these Indian names have been to a very large extent abandoned; in other cases they have been changed; and in many others there would be material changes in the recording of such names, owing to the different interpretations of the sound put upon the name by the person transcribing the same. To illustrate this, let me call attention to the names of three Indians which appear on the Chapman Roll of 1851, and also appear on the earlier Mullay Roll of 1848, and the later Sweetland Roll of 1869, and the Hester Roll of 1884. These names are all found on page 13 of the Hester Roll of 1884, without that page having been especially selected for the purpose. The names will be given in the order of the enrollment:

First:

Mullay Roll of 1848, No. 350,
the name is..... Talee-skes-kih;

Chapman Roll of 1851, No. 253, the name is..... Te-lah-ska-skih;
Sweetland Roll of 1869, No. 1065, the name is..... Te-la-ska-ski;
Hester Roll of 1884, No. 454, the name is..... Ta-lee-ske-kih;
And under the head of "latest and most correct spelling of names for this (Hester) census" the name is..... De-lah-ska-skih.

Second:

Mullay Roll of 1848, No. 309, the name is..... Ow-wah-soo-lee-kih;
Chapman Roll of 1851, No. 1456, the name is..... Kah-wah-soo-les-kih;
Sweetland Roll of 1869, No. 873, the name is..... Clau-tut-sih;
Hester Roll of 1884, No. 463, the name is..... Klat-en-tul-set;
And under the head of "latest and most correct spelling of names for this (Hester) census" the name is..... Clahn-tah-chih.

Third:

Mullay Roll of 1848, No. 29, the name is..... A-lar-chee;
Chapman Roll of 1851, No. 419, the name is..... John A-lah-chih;
Sweetland Roll of 1869, No. 335, the name is..... John Lar-chi;
Hester Roll of 1884, No. 464, the name is..... Alargih;
And under the head of "latest and most correct spelling of names for this (Hester) census" the name is..... Tsah-ne-lah-tsih.

These three cases illustrate the difficulties that will necessarily arise in endeavoring at this late date, fifty-five years after the original enrollment, to connect present claimants with their ancestors, who were enrolled in 1851 under Indian names—and let me repeat that more

than half of the names on the rolls of 1851 are in Indian. In the case of the Eastern Cherokees residing east of the Mississippi River, who were included under the Chapman Roll of 1851, we have the two later rolls above referred to, namely, the Sweetland and Hester rolls, to assist in the investigation, but the last of these was made up more than twenty years ago. In the case of the Eastern Cherokees residing west of the Mississippi River, which comprises the great body of these claimants, we have no later roll to assist in the investigation, as the last enrollment of the Eastern Cherokees, as such, residing west of the Mississippi River, was the enrollment of 1851.

With the great lapse of time, with the uncertainty of spelling, with the known custom among Indians to change or alter their names, such alterations affecting either the beginning or the ending of the name, and being sometimes occasioned by serious sickness or other calamity occurring in the family which would induce them to make a complete change of name, serious question arises as to whether or not it is practicable to trace back relationship in many of these cases to any given name upon the rolls of 1851.

So much for the cases where the enrollment is under an Indian name, but the difficulty does not end there, as there are many cases where only what we would regard as first names are given. For example, on the rolls taken together the name of Nancy by itself appears 176 times; the name of Jinney (in the three spellings of Jinnie, Jinney, and Jinny) appears 90 times; the name of Betsey appears 86 times, while in addition to this the Indian equivalent to Betsey, Quaitsey, appears 47 times; Lucy appears 77 times; John appears 88 times; George appears 65 times, with numerous other cases of single names appearing from 25 to 50 times. In a considerable number of these cases of single names, some family name might

be inferred, but at most it would only be an inference; in many others no family name at all could be gathered from the face of the rolls, and the name would stand simply by itself.

Another source of difficulty is inaccuracy in the original enrollment. The extent of this we can not as yet estimate, but one striking instance has been brought to our attention. One of the divisions of the Drennen Roll is known as the Illinois District; the third group of that district is as follows:

Polly Gearin.
Henry Gearin.
Ellis Gearin.
Fox Gearin.
Maria.
Sarah.
William Barnet.
Platoff Lowry.
A group of eight signed for by Polly Gearin, by mark.

We have been informed that this group consists of the mother, Polly, and seven children. The first three children, however, who are distinctly put down on the roll under the name of Gearin, were not in fact named Gearin, but were by a former marriage, and bore the name of Starr. So, too, while the roll indicates Ellis and Fox Gearin as separate individuals, the facts are reported to be that there was a child named Ellis Fox Starr, and another child named George Starr; the two names of the one child having been divided up and made into two separate individuals, while the true name of one, George, was entirely omitted. The Maria and Sarah named in the group should have been named Gearin, while William Barnet and Platoff Lowry, were also properly named Gearin, and were as a matter of fact twins.

While doubtless this is an extreme case, it forcibly illustrates the difficulties that are bound to arise in en-

deavoring to make a per stirpes distribution, using the rolls of 1851 as a basis.

This last difficulty is, of course, purely a practical and not a legal one. Of the same nature is another, which has assumed in many instances very large proportions. That is the great number of shares claimed by individual applicants, by reason of alleged relationship to individuals alleged to have been enrolled in 1851. A few cases may be cited:

William Elex or Elk, of Tahlequah, Indian Territory, who states that he was born in North Carolina in 1852, files application No. 9817, in which he claims through 44 separate lines, besides for himself, if it should be found that he was enrolled. These relatives consist of grandparents, great-uncles, great-aunts, father and mother, uncles and aunts, brothers and sisters, cousins, etc. While it is highly improbable that this claimant could prove himself to be the next of kin to all of these individuals, yet his claim would have to be examined with reference to each one—that is to say, an examination would have to be made to determine which, if any, of these 44 names were enrolled in 1851. Furthermore, an investigation would have to be made as to whether or not these individuals under some other name, or under some different spelling of the same name, may not have been enrolled. In cases where the names are found on the rolls of 1851, the further inquiry would have to be made as to whether or not these individuals were in fact dead. If so, the place and date of death, and whether or not they left direct issue, and if so whether or not the claimant was in fact in the relationship of one of the next of kin of such party. Also, if he was in that relation, the further inquiry would have to be made to determine how many others were in a like relationship, so that the proportionate part of the share might be determined, and so in regard to each of the others found to have been enrolled.

Another instance of multiplicity of claims may be stated. It is in the case of Polly Russell, who files application No. 10,397, claiming through her grandmother, Oc-tay-yah Guess; grandfather, Tee-see Guess; father, George Guess; brother, John or Benjamin; half-brother, Oo-sac-see-tee; uncle, Dick Guess; uncle, Andy or Joe Guess; uncle, Bat Guess; aunt, Sarah Guess; mother, Gus-sti-yeah Guess; uncle, Rider Che-tee-lun-kee; aunt Che-os-sa; aunt, Liddy; aunt, Si-we-usu-gah; uncle, Oh-sca-seah-tee; uncle, Ou-ja-la-na-he; cousin, Jennie Starr, nee Bump; cousin, Liddy Bump; cousin, Bill Bump; cousin, Wah-you-lah; uncle, Looney Langley; cousin, Ancey Bump; great uncle, Cur-lunt-es-gerner; great aunt, Polly, and their daughter, Tiana.

In submitting this case, Messrs. Watts & Curtis, of Sallisaw, Indian Territory, her attorneys, say: "We hope that you can make something out of these outlandish names; if you can you can do more than we can."

I would also invite your attention to a copy of application No. 10,606, filed herewith, wherein Eliza Andre claims through 53 different lines; and also a copy of her letter wherein she asserts that she will contest the right of all other claimants to any of these shares, except one double first cousin, who is entitled equally with herself.

While these are extreme cases, there are many that are similarly involved with claims made through ten to twenty individuals. The practical difficulty of investigating such claims must be manifest.

As furnishing an illustration of the arithmetical difficulties involved, one other case may be given: Eleanor B. Bell, of St. Elmo, Tennessee, files application No. 10,455, stating, "I claim one-fifth of one-seventh interest in the shares of Albina M., Alexander H. S., and William Joseph Bell; also one-fifth of one-seventh of one-sixth interest in the shares of William, Mary A., William E., and Elizabeth S. Rogers whose names are on the roll of

1851." This is really a comparatively simple case and yet she is claiming a 1-35 interest in three shares, and 1-210 interest in the shares of four others. It follows, of course, that it will be necessary to locate the persons entitled to the remaining 209-210 of these shares.

It has been suggested that under the terms of the decree of the Court of Claims, it was not the intention of the court to have this office trace out the next of kin of deceased Indians enrolled in 1851, and to figure out the share that would go to each such next of kin, but that all that was designed was to have this office determine all of those who were enrolled in 1851, who are now living, thereby necessarily at the same time determining those who are now dead. It would then be necessary to determine the time and place of death of those who had died, and have administrators designated by the appropriate probate courts. After such administrators had been duly appointed and had qualified by giving suitable bonds, the share of the decedents would be paid over to such administrators; leaving to the local probate courts and to such administrators the task of ascertaining the next of kin, and of making the proper distribution to such next of kin when so ascertained.

This procedure would, no doubt, be in compliance with the literal terms of the decree, but it would, I believe, be an innovation in the practice of this office, and it is not in accord with my understanding of the intentions of the Secretary of the Interior and of this office. If such is to be the procedure, it is of the utmost importance that that fact should be determined at the earliest possible moment. Some serious difficulties in proceeding in this way may be suggested. The difficulty of identification of the deceased individual has already been adverted to, but added to this would be the difficulty of locating the exact time and place of death, and of determining what probate court would have

proper jurisdiction of the case, and who was entitled to letters of administration. Serious injustice might result from the omission of individuals entitled to share in the distribution of such fund, resulting from their ignorance of the administration proceedings, either because of actual lack of acquaintance with the name of the decedent as enrolled in 1851, or because of lack of knowledge of the locality where he died. Take for example a case such as is disclosed by application No. 6809, filed by Mary E. Carley of Sheep Ranch, California, claiming through her father, Clement Vann McNair. He was born in Tennessee, was living in the Cherokee Nation in 1851, but shortly after moved to California, where he married, and where claimant was born, and where her father died in 1897. If some relative of McNair's in Indian Territory should see fit to ask for letters of administration there, alleging that McNair lived there in 1851, and had died there, or had not been heard from at any other point, how improbable it is that the daughter in California would ever learn of the proceedings. In this case letters might possibly be taken out in Tennessee, Indian Territory, and California. Difficulties of this character would be much more frequent in cases where the primary beneficiary was enrolled in the east in 1851, but moved to Indian Territory afterward. There are many such cases. Many changes of residence have taken place among these people.

The expense of administration would also be a material item, as in the case of the claimant referred to above, where there were fifty-three shares to be considered. In order to maintain her rights in each instance it might be necessary for this claimant to appear before as many different probate courts, and there litigate her rights as one of the next of kin of the deceased. But leaving out contested cases, in which the expense of litigation might easily consume the entire estate, it is evident that with an enrollment of 16,315 in 1851 there would have to be

now at least 12,000 administrations. Each estate would amount to about $250, and allowing the administrator 10 per cent commission, and estimating the court costs at a minimum of $10, in each case, the total cost to the Indians would be over $400,000, which would be in addition to the expense of this office in making up the rolls.

Again, it seems altogether probable that there may be hundreds, if not thousands, of names on the rolls of 1851 of persons who can not in any way be identified. This would make it possible for persons so disposed to ask for letters of administration on the estates of such persons, averring the date and place of death at some convenient point, publishing the same, and under some claim of relationship securing the money; there being no one having sufficient knowledge of the facts, or of the proceedings, to controvert any of these statements or, in fact, to create sufficient interest to cause an investigation into the rights of such claimants. In these instances unless the Department should assume the responsibility and the burden of investigating each case where such application was made, opportunities for fraud would be almost unlimited.

On the other hand, if administrators are not to be appointed and the per stirpes distribution is to be retained, grave difficulties will arise in determining who are in fact the next of kin of any given decedent; what laws of distribution must apply; whether a husband's right should be recognized in the estate of his deceased wife, and vice versa. As an example of these difficulties, the application of Catharine Craig, No. 9418, may be given. In it she claims as wife of Frank W. Craig, deceased, who was born in Missouri, in 1854. She claims the interest of her husband, in his mother's right, and also the interest of her husband, in his brother's right. Assuming that applicant's mother-in-law, Eliza Craig, was enrolled in 1851, and that her brother-in-law,

William Craig, was likewise enrolled in 1851, the questions involved would be, did Eliza Craig and William Craig die in Missouri; if so, when; did the husband, Frank W. Craig, survive them; was he the sole next of kin of the said Eliza Craig and William Craig; did he die without issue; what was the law of distribution at the place of death of Eliza Craig and William Craig, and at the place of death of the husband, Frank W. Craig? Under the law of distribution applicable in those cases, would the widow have any rights? If so, what would be the extent of those rights? Innumerable questions as to the law of distribution would necessarily arise.

As the Indians have been so widely scattered through so many States and Territories, and the laws of distribution have been changed so frequently, no uniform rule would seem possible.

It has been suggested, and with some force, that, at least up to the time of the judgment entered in this case, there was no property rights vested in any of the Indians, which could properly be the subject of the laws of administration and distribution; that there was only a right of action against the United States which could not be enforced except by the consent of the United States, and that right was vested in the band of Eastern Cherokees rather than in any individual Eastern Cherokee.

In view of the difficulties set forth above, I respectfully suggest that this matter be called to the attention of the Honorable Secretary of the Interior, in order that he may consider the advisability of referring the matter back to the Court of Claims for further instructions. If such reference is made, I would further suggest that questions similar to the following should be submitted to the court for its determination:

First. Should the language of the second paragraph of the decree of the Court of Claims of May 28, 1906, that "it is further ordered and decreed that the Secretary of the Interior prepare, or cause to be prepared, a list or

roll of all persons coming within the said description entitled to share in the distribution of said fund; and in preparing the said list or roll of such persons, the Secretary of the Interior shall accept as a basis for the distribution of said fund the rolls of 1851, upon which the per capita payment to the Eastern Cherokees was made, and make such distribution in pursuance of article 9 of the treaty of 1846," be so construed as to exclude from enrollment claimants who can establish the fact that their ancestors were Eastern Cherokees at the time of the Treaty of New Echota of 1835–6, and were enrolled as such under said treaty, but who are unable to prove either that they were themselves enrolled with the Eastern Cherokees for the per capita payment on the rolls of 1851, or that they are the legal representatives of some one who was so enrolled in 1851? In other words, shall the rolls of 1851 be taken as the basis for the present enrollment, to the exclusion of all persons not enrolled in 1851, or not directly tracing through some one so enrolled at that time, notwithstanding such persons could prove that they or their ancestors were duly enrolled under the Treaty of New Echota in 1835–6?

Second. Is the distribution to be *per stirpes* or *per capita?*

Third. If per stirpes, from what time? This question is, of course, dependent upon the answer to the first question, for if the rolls of 1851 are to be the exclusive basis for the enrollment, that would fix the time.

Fourth. If the payment is to be made per stirpes, must each present beneficiary be enrolled, and the exact amount due each determined and payment made to him direct, or, must administrators upon the estates of the primary beneficiaries be appointed, and the shares of the decedents paid over to such administrators, leaving to the local courts to determine the laws of descent applicable to each case, and the persons who are the next of kin entitled to participate in such estates?

Fifth. If the payment is to be made per stirpes what disposition shall be made of the shares of primary beneficiaries, who left no known next of kin; or where no letters of administration have been taken out upon the estate of such primary beneficiaries?

Sixth. If the payment is to be made per capita, as of what date shall the enrollment be made?

There have already been filed over 17,500 applications, and by the 31st of March, the time now limited for the filing of applications, there will probably be something over 20,000 such applications.

Pending the determination of the questions above indicated there is ample work to keep the present force engaged in making the preliminary examination of these applications, having omissions supplied, and grouping them into families, so that the claims of relatives may be considered together. No matter what answers may be given to the above questions this work will have to be done.

Although I have known of several of the difficulties referred to above for sometime, I thought it best to wait until the whole matter had been fully developed before asking for further instructions, so that all questions to be raised might be disposed of together. I believe, however, that the facts have now been fully disclosed, and if the matter is to be referred to the Court of Claims it is important that this should be done in time to secure, if possible, a ruling from that court before the summer vacation.

I inclose, herewith, a copy of the order of August 20, 1906, referred to above, which was in fact only the formal notice to claimants to file claims, which notice was duly approved by the Secretary of the Interior, before issuance.

Very respectfully,

GUION MILLER,
*Special Agent for the Enrollment*
*of Eastern Cherokees.*